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H.B. No. 2373

A BILL TO BE ENTITLED

AN ACT

relating to the purchasing and contracting practices of junior college districts; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 44.0311(a), Education Code, is amended to read as follows:

(a) This subchapter does not apply ~~[applies]~~ to junior college districts.

SECTION 2. Section 51.776(2), Education Code, is amended to read as follows:

(2) "Board" means the governing body of an institution other than the governing board of a junior college district.

SECTION 3. Subchapter A, Chapter 130, Education Code, is amended by adding Sections 130.0104, 130.0105, 130.0106, and 130.0107 to read as follows:

Sec. 130.0104. POLICY AND REPORT REGARDING HISTORICALLY UNDERUTILIZED BUSINESSES. (a) In this section, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(b) This section applies only to a junior college district that:

(1) is located wholly or partially in a county with a population of one million or more; and

(2) had an annual enrollment of 20,000 or more

1 full-time or part-time students in one or more of the most recent
2 five academic years.

3 (c) Each junior college district shall adopt a policy
4 stating its commitment to developing, maintaining, and enhancing
5 participation by historically underutilized businesses in all
6 phases of the district's procurement processes in order to support,
7 to the greatest extent feasible, the efforts of historically
8 underutilized businesses to compete for purchases of equipment,
9 supplies, services, including professional services, and
10 construction contracts.

11 (d) Annually, each junior college district shall publish a
12 report of the total number and total value of contracts awarded by
13 the district in the preceding fiscal year and the number and total
14 value of those contracts awarded to historically underutilized
15 businesses. The report must be published in a newspaper of general
16 circulation in the county in which the majority of the territory or
17 population of the district is located not later than the 60th day
18 following the last day of the district's fiscal year.

19 Sec. 130.0105. RIGHT TO WORK. (a) This section applies to a
20 district while the district is engaged in:

21 (1) procuring goods or services;
22 (2) awarding a contract; or
23 (3) overseeing procurement or construction for a
24 public work or public improvement.

25 (b) Notwithstanding any other provision of this chapter, a
26 district:

27 (1) may not consider whether a vendor is a member of or

1 has another relationship with an organization; and

2 (2) shall ensure that its bid specifications and any
3 subsequent contract or other agreement do not deny or diminish the
4 right of a person to work because of the person's membership in or
5 other relationship status with respect to an organization.

6 Sec. 130.0106. CONTRACT WITH PERSON INDEBTED TO DISTRICT.

7 (a) The board of trustees of a district by resolution may establish
8 rules permitting the district to refuse to enter into a contract or
9 other transaction with a person indebted to the district.

10 (b) It is not a violation of this subchapter for a district,
11 under rules adopted under Subsection (a), to refuse to award a
12 contract to, or refuse to enter into a transaction with, an apparent
13 low bidder or successful proposer that is indebted to the district.

14 Sec. 130.0107. EFFICIENCY AND SAVINGS. In order to
15 increase efficiency of operations and to achieve savings through
16 volume purchases, on an annual basis a district shall identify
17 common types of goods and services to be purchased from the
18 district's budget and, to the extent the district determines
19 practicable, consolidate the purchase of those goods or services
20 under contracts entered into under this subchapter.

21 SECTION 4. Chapter 130, Education Code, is amended by
22 adding Subchapters K, L, M, and N to read as follows:

23 SUBCHAPTER K. PURCHASING CONTRACTS FOR GOODS AND SERVICES OTHER
24 THAN CONSTRUCTION OR PROFESSIONAL SERVICES

25 Sec. 130.251. DEFINITIONS. In this subchapter:

26 (1) "Board of trustees" means the governing board of a
27 district.

1 (2) "District" means a junior college district.

2 (3) "Purchase of goods":

3 (A) includes:

4 (i) contracting for the rights to use
5 rather than own goods; and

6 (ii) purchase of the materials and labor
7 incidental to the delivery and installation of personal property;
8 and

9 (B) does not include the purchase or lease of
10 real property.

11 (4) "Services" does not include:

12 (A) construction services; or

13 (B) professional services, including services of
14 a consultant, to which Subchapter N applies.

15 Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID."

16 (a) In this subchapter, the terms "bidder" and "vendor" are used
17 interchangeably to identify an entity that responds to a request
18 for competitive bids, proposals, or qualifications.

19 (b) In this subchapter, the term "bid" is used to refer to a
20 competitive bid, proposal, or statement of qualifications.

21 Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
22 conflict, this subchapter prevails over any other law relating to
23 the purchase of goods and services by a district other than a law
24 relating to contracting with historically underutilized
25 businesses.

26 Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
27 provided by this subchapter and subject to Section 130.264, each

1 contract by a district with a value of \$50,000 or more that covers
2 one or more fiscal years shall be made by the method, of the
3 following methods, that provides the best value for the district:

4 (1) competitive sealed bids;

5 (2) competitive sealed proposals;

6 (3) the reverse auction procedure defined by Section
7 2155.062(d), Government Code; or

8 (4) the formation of a political subdivision
9 corporation under Section 304.001, Local Government Code.

10 (b) Only one of the methods listed in Subsection (a) may be
11 used for any individual contract. The district must determine
12 which method provides the best value for the district before
13 publishing the notice required by Section 130.258.

14 (c) If the district uses the competitive sealed proposal
15 method, the district shall:

16 (1) reveal when the proposals are opened the names of
17 the companies submitting proposals; and

18 (2) keep the contents of the proposals confidential
19 until the district concludes negotiations and awards a contract.

20 (d) Without complying with Subsection (a), a district may
21 purchase a good or service that is available from only one source,
22 including:

23 (1) an item for which competition is precluded because
24 of the existence of a patent, copyright, secret process, or
25 monopoly;

26 (2) a film, recording, periodical, manuscript, book,
27 or computer software;

1 (3) a utility service, including gas or water;
2 (4) a captive replacement part or component for
3 equipment;
4 (5) a product needed to match or work with like
5 products; and
6 (6) technical or specialized services, including
7 advertising, audio/video production, and the repair and
8 maintenance of specialized equipment.

9 (e) Without complying with Subsection (a), a district may
10 purchase perishable goods, advertising services, meeting and
11 catering services, and travel services, including airfare, ground
12 transportation, and all lodging. The district shall exercise
13 reasonable and prudent care to determine whether a contract with a
14 provider will provide the best value to the district. The district
15 shall document the process for selecting the provider of the goods
16 or services and shall maintain a list of prospective providers
17 contacted and the basis for selecting the provider. To the extent
18 practicable, the district shall state its requirements in writing
19 and require written proposals or quotations from prospective
20 providers. Any prospective provider that has provided written
21 notice to the district that it is interested in being considered as
22 a supplier of goods or services covered by this subsection shall be
23 given the opportunity to make an offer to provide the goods or
24 services. After rating and ranking the offers, the district shall
25 attempt to negotiate a contract with the highest ranked vendor. If
26 a contract cannot be negotiated with the highest ranked vendor, the
27 next highest ranked vendor shall be contacted. If the value of a

1 purchase to be made under this section is estimated to be \$50,000 or
2 greater, the district shall publish notice of the intent to
3 purchase as provided under Section 130.258. If the value of a
4 purchase to be made under this section is estimated to be \$10,000 or
5 more but less than \$50,000 during a fiscal year, the award of a
6 contract must be made in accordance with a policy established by the
7 board of trustees.

8 (f) Without complying with Subsection (a), a district may
9 purchase a good or service under:

10 (1) an interlocal contract under Chapter 791,
11 Government Code;

12 (2) a contract established by the Texas Building and
13 Procurement Commission or Department of Information Resources,
14 including a contract for the purchase of travel services, telephone
15 service, computers, and computer-related equipment and software;

16 (3) a catalog purchase as provided by Subchapter B,
17 Chapter 2157, Government Code; or

18 (4) a purchase made under Subchapter D, F, or G,
19 Chapter 271, Local Government Code.

20 (g) Contracts for services that result in no cost to the
21 district or that provide income to a district must be based on bids,
22 proposals, or qualifications that are solicited and awarded in the
23 same manner as a contract for the purchase of goods or services.
24 Such contracts include contracts for bookstore services, food
25 services, and vending services.

26 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
27 acquire insurance using a two-step process to obtain competitive

1 sealed proposals. In the first step, the district shall determine
2 which insurance providers are represented by agents interested in
3 providing insurance for the district. If more than one agent
4 indicates a desire to represent the same provider, the agent with
5 the longest and most substantial relationship with the insurance
6 provider shall be authorized to submit a proposal for the
7 designated insurance provider. In the second step, the district
8 shall notify the interested agents in writing as to which insurance
9 providers the agents represent and request the agents to submit
10 proposals for providing insurance.

11 (b) In notifying the interested agents to begin the second
12 step, the district is not required to comply with Section 130.258.
13 However, the district in the request for proposals shall give the
14 interested agents notice of the date, time, and place where
15 proposals are to be submitted. Proposals received after the date
16 and time stated in the request for proposals may not be considered.

17 Sec. 130.255. MULTIYEAR CONTRACT. A contract that extends
18 past the end of a district's fiscal year must include a provision
19 that permits termination at the end of each fiscal year. Contracts
20 solely for the purchase of goods may not exceed five years in
21 duration.

22 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT. (a) Except
23 as otherwise provided by this subchapter, a district shall award a
24 contract to the lowest responsible bidder offering the best value
25 to the district according to the selection criteria established by
26 the district. The district shall publish in the request for bids,
27 proposals, or qualifications the criteria the district will use to

1 evaluate the offers and the relative weights given to the criteria
2 that are known at the time of the publication.

3 (b) In determining the lowest responsible bidder, the
4 district may consider:

5 (1) the purchase price, including delivery and
6 installation charges;

7 (2) the reputation of the bidder and of the bidder's
8 goods or services;

9 (3) the quality of the bidder's goods or services;

10 (4) the extent to which the offered goods or services
11 meet the district's needs;

12 (5) the bidder's past relationship with the district;

13 (6) the total long-term cost to the district to
14 acquire the bidder's goods or services;

15 (7) the extent to which the offers comply with the
16 requirements of the request for bids, proposals, or qualifications;

17 (8) any other relevant factor specifically listed in
18 the request for bids or proposals; and

19 (9) the impact on the ability of the district to comply
20 with laws and rules relating to historically underutilized
21 businesses.

22 (c) A district may reject any or all bids, proposals,
23 qualifications, or parts of bids, proposals, or qualifications if
24 the rejection serves the district's interest.

25 (d) The district shall provide all bidders with the
26 opportunity to bid to provide the same goods or services on equal
27 terms and to have bids judged according to the same standards as

1 those set forth in the request for bids.

2 (e) Bids may be opened only by the district in a
3 district-owned or district-controlled facility. The meeting or
4 other occasion at which bids are opened shall be open to the public.
5 At the time the district opens a bid, if one or more members of the
6 public are present, the appropriate employee or officer of the
7 district shall read aloud the name of the bidder and the total bid
8 amount, if the bid is of a type that should contain a single bid
9 amount. When opening proposals or qualifications, the appropriate
10 employee or officer shall read aloud only the name of the
11 respondents and may not disclose the contents of a proposal or
12 qualification on opening or during negotiations with competing
13 bidders. At least two district employees or members of the
14 district's board of trustees must be present at the bid, proposal,
15 or qualification opening.

16 (f) A bid that has been opened may not be changed for the
17 purpose of correcting an error in the bid price. If there is a
18 discrepancy between the total price and the unit price of a bid, the
19 unit price prevails. If there is a discrepancy between the written
20 price and the numerical price of a bid, the written price prevails.

21 (g) This subchapter does not change the common law right of
22 a bidder to withdraw a bid due to a material mistake in the bid.

23 (h) The district shall document the basis of its selection
24 and shall make its evaluations public not later than the seventh day
25 after the date the contract is awarded. The district shall state in
26 writing in the contract file the reasons for making an award.

27 (i) A contract awarded in violation of this subchapter is

1 void.

2 (j) If district property is destroyed, stolen, severely
3 damaged, or unusable, or a contractor is unable to fulfill its
4 obligations in providing goods or services, and the board of
5 trustees, or its designee, determines that the delay posed by using
6 the methods required by Section 130.253(a) would pose a material
7 threat to personal safety or potential damage to other property or
8 would prevent or substantially impair the conduct of classes or
9 other essential district activities, then contracts for the
10 replacement or repair of the property may be made by methods other
11 than those required by Section 130.253(a).

12 (k) In awarding a contract by competitive sealed bid under
13 this section, a district that has its central administrative office
14 located in a municipality with a population of less than 250,000 may
15 consider a bidder's principal place of business in the manner
16 provided by Section 271.9051, Local Government Code. This
17 subsection does not apply to the purchase of telecommunications
18 services or information services, as those terms are defined by 47
19 U.S.C. Section 153.

20 Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE
21 AUDITOR. (a) The board of trustees may adopt rules and procedures
22 for the acquisition of goods or services by the district.

23 (b) The state auditor may audit purchases of goods or
24 services by the district.

25 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
26 this subchapter, for any method of contracting selected under
27 Section 130.253(a), the district shall, within a seven-day period,

1 publish the notice required by this section in at least two issues
2 of any newspaper of general circulation in the county in which the
3 district's central administrative office is located. The deadline
4 for receiving bids or proposals may not be less than 10 business
5 days after the date of the publication of the first newspaper
6 notice. The deadline for receiving responses to a request for
7 qualifications may not be less than five business days after the
8 date of the publication of the last newspaper notice. If there is
9 not a newspaper of general circulation in the county in which the
10 district's central administrative office is located, the notice
11 shall be published in a newspaper of general circulation in a
12 location nearest the district's central administrative office. In
13 a two-step procurement process, the time and place where the
14 second-step bids, proposals, or responses will be received are not
15 required to be included in the notice.

16 (b) The district may, as an alternative to publishing
17 individual notices in a newspaper, publish on a publicly accessible
18 Internet site the notices required by this section, provided the
19 district publishes in a newspaper of general circulation at least
20 one time per week the Internet address where district notices may be
21 found. Notice posted on the Internet under this subsection must be
22 posted every day for at least 10 business days before the deadline
23 for receiving the bids, proposals, or responses to a request for
24 qualifications.

25 (c) The notice required by this section must include:

26 (1) the location where the request for bid, proposal,
27 or qualification documents may be obtained or examined;

1 (2) the date, time, and place for receiving and
2 opening bids, proposals, or statements of qualifications;

3 (3) a general description of the goods or services;

4 (4) the location and time of any mandatory site
5 inspections or pre-bid meetings; and

6 (5) the amount of any required bid bond, payment bond,
7 or performance bond.

8 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS. (a) As
9 provided in a request for proposals and under rules adopted by the
10 district, the district may discuss acceptable or potentially
11 acceptable proposals with bidders to assess a bidder's ability to
12 meet the solicitation requirements.

13 (b) After receiving a proposal but before making an award,
14 the district may permit the three highest-ranking bidders to revise
15 their proposals, within the scope of the published specifications,
16 to obtain the best final offer.

17 (c) Before an award, the district may not disclose
18 information derived from proposals submitted from competing
19 bidders in conducting discussions under this section.

20 Sec. 130.260. PRE-BID CONFERENCE. (a) The district may
21 require a principal, officer, or employee of each prospective
22 bidder to attend a mandatory pre-bid conference conducted for the
23 purpose of discussing contract requirements and answering
24 questions from prospective bidders. Notice under this subsection
25 must be included in the notice published under Section 130.258.

26 (b) After the district conducts a mandatory pre-bid
27 conference, the district may send any additional required notice

1 for the proposed contract only to prospective bidders who attended
2 or were represented at the conference.

3 Sec. 130.261. IDENTICAL BIDS. If, after considering the
4 factors described by Section 130.256, the district determines that
5 the district has received identical bids, the district shall cast
6 lots to determine which bidder will be awarded the contract. The
7 district shall invite the bidders to witness the selection process
8 under this section. The selection process must be conducted by at
9 least two district employees or members of the district's board of
10 trustees.

11 Sec. 130.262. BID DEPOSIT. (a) The district may, as the
12 district determines necessary, require a bid deposit in an amount
13 determined by the district. The amount of the deposit, if any, must
14 be stated in the notice required by Section 130.258 of the
15 invitation to bid.

16 (b) On the award of a contract or the rejection of all bids,
17 the district shall return the bid deposit of an unsuccessful
18 bidder. The bid deposit of the successful bidder may be retained
19 until the contract is signed by the district. A bid deposit may not
20 be held longer than 90 days.

21 (c) The bid deposit required by the district, if any, must
22 be in the form of a cashier's check, certified check, or bid bond
23 written by a surety authorized to conduct business in this state. A
24 district may elect to require a bid deposit to be in the form of a
25 bid bond.

26 Sec. 130.263. PERFORMANCE BOND. A district may require a
27 contractor to provide a performance bond in the amount of the

1 contract before executing a contract for the purchase of goods or
2 services with a value of \$100,000 or more. The bond must be written
3 by a surety authorized to conduct business in this state and
4 generally comply with the performance bond requirements of Chapter
5 2253, Government Code.

6 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
7 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
8 this section:

9 (1) "Component purchases" means purchases of the
10 component parts of an item that in normal purchasing practices
11 would be purchased in one purchase.

12 (2) "Separate purchases" means purchases, made
13 separately, of goods or services that in normal purchasing
14 practices would be purchased in one purchase.

15 (3) "Sequential purchases" means purchases, made over
16 a period, of goods or services that in normal purchasing practices
17 would be purchased in one purchase.

18 (b) An officer, employee, or agent of a district commits an
19 offense if the person with criminal negligence makes or authorizes
20 separate, sequential, or component purchases for the purpose of
21 avoiding the requirements of Section 130.253, 130.256, or 130.266.
22 An offense under this subsection is a Class B misdemeanor and is an
23 offense involving moral turpitude that results in a forfeiture of
24 an officer's public office.

25 (c) An officer, employee, or agent of a district commits an
26 offense if the person with criminal negligence violates Section
27 130.253, 130.256, or 130.266 other than by conduct described by

1 Subsection (b). An offense under this subsection is a Class B
2 misdemeanor and is an offense involving moral turpitude that
3 results in a forfeiture of an officer's public office.

4 (d) An officer or employee of a district commits an offense
5 if the officer or employee knowingly violates Section 130.253,
6 130.256, or 130.266 other than by conduct described by Subsection
7 (b) or (c). An offense under this subsection is a Class C
8 misdemeanor.

9 (e) The final conviction of a person other than a member of
10 the board of trustees of a district for an offense under Subsection
11 (b) or (c) results in the immediate removal from office or
12 employment of that person. A trustee who is convicted of an offense
13 under this section is subject to removal as provided by Chapter 66,
14 Civil Practice and Remedies Code. For four years after the date of
15 the final conviction, the removed person is ineligible to be a
16 candidate for or to be appointed or elected to a public office in
17 this state, is ineligible to be employed by or act as an agent for
18 this state or a political subdivision of this state, and is
19 ineligible to receive any compensation through a contract with this
20 state or a political subdivision of this state. This subsection
21 does not prohibit the payment of retirement benefits to the removed
22 person or the payment of workers' compensation benefits to the
23 removed person for an injury that occurred before the commission of
24 the offense for which the person was removed. This subsection does
25 not make a person ineligible for an office for which the federal or
26 state constitution prescribes exclusive eligibility requirements.

27 (f) A court may enjoin performance of a contract made in

1 violation of this subchapter. A county attorney, district
2 attorney, criminal district attorney, citizen of the county in
3 which the district is located, or an interested party may bring an
4 action for an injunction. A party who prevails in an action brought
5 under this subsection is entitled to reasonable attorney's fees as
6 approved by the court.

7 Sec. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR
8 MISCELLANEOUS PURCHASES. (a) This section applies only to the
9 selection and engagement of vendors from which a district may
10 purchase goods or services, including produce, gasoline, and fuel
11 oil, where the total cost of the goods and services is expected to
12 be \$50,000 or more during a fiscal year but the selling price must
13 be determined at the time the need for the goods and services
14 arises.

15 (b) The notice requirements of Section 130.258 apply to
16 purchases made under this section, except that the notice must
17 specify the categories of goods or services to be purchased under
18 this section and solicit the names, addresses, and telephone
19 numbers of bidders that are interested in supplying the goods or
20 services to the district. The district shall create and provide a
21 proposal form to be used by interested bidders. The form must
22 describe the goods or services that may be required, and the terms
23 and conditions of, and method for, determining the price of the
24 bidders' products and services. Bidders desiring to be included on
25 the list must complete and sign the district's form. The district
26 shall determine which bidders are qualified to be included on a list
27 of bidders from which goods and services may be purchased during the

1 applicable fiscal year.

2 (c) Before the district makes a purchase covered by this
3 section, the district must obtain written price quotations from at
4 least three bidders from the list created by the district for that
5 category. If fewer than three bidders are on the list, the district
6 shall contact each bidder on the list. If more than three bidders
7 are on the list, the district may invite all bidders to provide a
8 quotation or may select three bidders on a rotational basis each
9 time a purchase is to be made. The bidding records must be retained
10 with the district's competitive bidding records and are subject to
11 audit. In determining from whom to purchase the goods or services,
12 the district may consider the provisions of Section 130.256.

13 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING. (a)
14 Except as provided under Sections 130.253(d), (f), and (g), and
15 Section 130.256(j), a purchase of goods or services with a cost of
16 \$10,000 or more but less than \$50,000 must be made by written
17 competitive bids or proposals. A minimum of three bids or proposals
18 must be considered before the award of a contract or order for the
19 specified goods or services. A district is not required to
20 advertise the purchase.

21 (b) In determining from whom to purchase the goods or
22 services under this section, the district shall consider the
23 provisions of Section 130.256.

24 (c) A person may not use the process described by this
25 section to knowingly violate Section 130.264.

26 Sec. 130.267. NOTIFICATION OF CRIMINAL HISTORY OF
27 CONTRACTOR. (a) A person or business entity that enters into a

1 contract with a district must give advance notice to the district if
2 the person or an owner or operator of the business entity has been
3 convicted of a felony. The notice must include a general
4 description of the conduct resulting in the conviction of a felony.

5 (b) A district may refuse to enter into a contract or other
6 transaction with a person who has been convicted of a felony or with
7 a business entity if an owner or operator of the entity has been
8 convicted of a felony.

9 (c) A district may terminate a contract with a person or
10 business entity if the district determines that the person or
11 business entity failed to give notice as required by Subsection (a)
12 or misrepresented the conduct resulting in the conviction. The
13 district must compensate the person or business entity for goods
14 delivered or services performed before the termination of the
15 contract.

16 (d) This section does not apply to a publicly held
17 corporation.

18 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES
19 PRODUCTS. (a) A district that purchases agricultural products
20 shall give preference to those products produced, processed, or
21 grown in this state if the cost to the district for those products
22 is equal to or less than the cost of other products and the quality
23 of those products is equal to or exceeds the quality of other
24 products.

25 (b) If a district determines that agricultural products
26 produced, processed, or grown in this state are not entitled to a
27 preference under Subsection (a), the district shall give preference

1 to agricultural products produced, processed, or grown in other
2 states of the United States over foreign products if the cost to the
3 district for those products is equal to or less than the cost of
4 foreign products and the quality of those products is equal to or
5 exceeds the quality of the foreign products.

6 (c) A district that purchases vegetation for landscaping
7 purposes, including plants, shall give preference to Texas
8 vegetation if the cost to the district for that vegetation is equal
9 to or less than the cost of other vegetation and the quality of that
10 vegetation is not inferior to the quality of other vegetation.

11 (d) In implementing this section, a district may receive
12 assistance from and use the resources of the Department of
13 Agriculture, including information on the availability of
14 agricultural products.

15 (e) A district may not adopt product purchasing
16 specifications that unnecessarily exclude agricultural products
17 produced, processed, or grown in this state.

18 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase
19 efficiency of operations and to achieve savings through volume
20 purchases, on an annual basis a district shall identify common
21 types of goods and services to be purchased from the district's
22 budget and, to the extent the district determines practicable,
23 consolidate the purchase of those goods or services under contracts
24 entered into under this subchapter.

25 SUBCHAPTER L. CONSTRUCTION CONTRACTS

26 Sec. 130.301. DEFINITIONS. In this subchapter:

27 (1) "Architect" means an individual registered as an

1 architect under Chapter 1051, Occupations Code.

2 (2) "Board of trustees" means the governing board of a
3 district.

4 (3) "Construction" means the construction,
5 rehabilitation, alteration, or repair of a facility, including all
6 goods and labor incidental to the construction.

7 (4) "Contractor" in the context of a contract for the
8 construction, rehabilitation, alteration, or repair of a facility
9 means a sole proprietorship, partnership, corporation, or other
10 legal entity that assumes the risk for constructing,
11 rehabilitating, altering, or repairing all or part of the facility
12 at the contracted price.

13 (5) "District" means a junior college district.

14 (6) "Engineer" means an individual licensed as a
15 professional engineer under Chapter 1001, Occupations Code.

16 (7) "Facility" means real property or a public work,
17 including buildings and associated systems, structures, and
18 components, and improved or unimproved land.

19 (8) "Fee" in the context of a contract for the
20 construction, rehabilitation, alteration, or repair of a facility
21 means the payment a construction manager receives for its overhead
22 and profit in performing its services.

23 (9) "General conditions" in the context of a contract
24 for the construction, rehabilitation, alteration, or repair of a
25 facility means on-site management, administrative personnel,
26 insurance, bonds, equipment, utilities, and incidental work,
27 including minor field labor and materials.

1 Sec. 130.302. USE OF TERMS "BIDDER," "OFFEROR," "VENDOR,"
2 AND "BID." (a) In this subchapter, the terms "bidder," "offeror,"
3 and "vendor" are used interchangeably to identify an entity that
4 responds to a request for competitive bids or proposals, or for
5 offers or qualifications.

6 (b) In this subchapter, the term "bid" is used to refer to a
7 competitive bid or proposal or to a statement of qualifications.

8 Sec. 130.303. METHODS OF CONTRACTING. (a) Except as
9 otherwise provided by this subchapter and subject to Section
10 130.313, all contracts for construction, rehabilitation,
11 alteration, or repair of facilities valued at \$50,000 or more shall
12 be made by the method, of the following methods, that provides the
13 best value for the district:

14 (1) competitive sealed bids;
15 (2) competitive sealed proposals;
16 (3) a design-build contract;
17 (4) a construction manager-at-risk; or
18 (5) a job order contract for the minor construction,
19 repair, rehabilitation, or alteration of a facility.

20 (b) Only one of the methods listed in Subsection (a) may be
21 used for any individual contract. A district must determine which
22 method provides the best value for the district before providing
23 the notice required by Section 130.306.

24 (c) If the district uses the competitive sealed proposal
25 method, the district shall:

26 (1) reveal when the proposals are opened the names of
27 the companies submitting proposals; and

1 (2) keep the contents of the proposals confidential
2 until the district concludes negotiations and awards a contract.

3 (d) A district may contract for the services of a
4 construction manager-agent as provided by Section 130.318 in
5 conjunction with the method of construction selected under
6 Subsection (a).

7 Sec. 130.304. EVALUATION AND AWARD OF CONTRACT. (a) Except
8 as otherwise provided by this subchapter, a district shall award a
9 contract to the lowest responsible bidder offering the best value
10 to the district according to the selection criteria established by
11 the district. The district shall publish in the request for bids,
12 proposals, or qualifications the criteria the district will use to
13 evaluate the offers and the relative weights given to the criteria
14 that are known at the time of the publication.

15 (b) In determining the lowest responsible bidder, the
16 district may consider:

- 17 (1) the immediate and long-term cost of the service;
18 (2) the reputation of the bidder;
19 (3) the quality of the bidder's services;
20 (4) the extent to which the offered services meet the
21 district's needs;
22 (5) the bidder's past relationship with the district;
23 (6) the extent to which the offers comply with the
24 requirements of the request for bids, proposals, or qualifications;
25 (7) any other relevant factor specifically listed in
26 the request for bids or proposals;
27 (8) the impact on the ability of the district to comply

1 with laws and rules relating to historically underutilized
2 businesses; and

3 (9) the bidder's safety record, if:

4 (A) the district has adopted a written definition
5 and criteria for accurately determining the safety record of a
6 bidder;

7 (B) the district has given notice to prospective
8 bidders in the request for bids that the safety record of a bidder
9 may be considered in determining the responsibility of the bidder;
10 and

11 (C) the district's determinations are not
12 arbitrary and capricious.

13 (c) A district may reject any or all bids, proposals,
14 qualifications, or parts of bids, proposals, or qualifications if
15 the rejection serves the district's interest.

16 (d) The district shall provide all bidders with the
17 opportunity to submit a bid or proposal to provide the same items or
18 services on equal terms and have bids judged according to the same
19 standards as those set forth in the request for bids.

20 (e) Bids may be opened only by the district in a
21 district-owned or district-controlled facility. The meeting or
22 other occasion at which bids are opened must be open to the public.
23 At the time the district opens a bid, if one or more members of the
24 public are present, the appropriate employee or officer of the
25 district shall read aloud the name of the bidder and the total bid
26 amount if the bid is of a type that should contain a single bid
27 amount. At least two district employees or members of the board of

1 trustees must be present at the bid opening. When opening proposals
2 or qualifications, the appropriate employee or officer shall read
3 aloud only the names of the respondents and may not disclose the
4 contents of a proposal or qualification on opening the proposal or
5 qualification or during negotiations with competing bidders.

6 (f) A bid that has been opened may not be changed for the
7 purpose of correcting an error in the bid price.

8 (g) This subchapter does not change the common law right of
9 a bidder to withdraw a bid due to a material mistake in the bid.

10 (h) The district shall document the basis of its selection
11 and shall make its evaluations public not later than the seventh day
12 after the date the contract is awarded. The district shall state in
13 writing in the contract file the reasons for making an award.

14 (i) A contract awarded in violation of this subchapter is
15 void.

16 (j) If district property is destroyed, stolen, severely
17 damaged, unusable, or undergoes major operational or structural
18 failure, or a contractor is unable to fulfill its obligations in
19 providing goods or services, and the board of trustees, or its
20 designee, determines that the delay posed by using the methods
21 required by Section 130.303(a) would pose a material threat to
22 personal safety or potential damage to other property or would
23 prevent or substantially impair the conduct of classes or other
24 essential district activities, then contracts for the replacement
25 or repair of the property may be made by methods other than those
26 required by Section 130.303(a).

27 (k) In awarding a contract by competitive sealed bid under

1 this section, a district that has its central administrative office
2 located in a municipality with a population of less than 250,000 may
3 consider a bidder's principal place of business in the manner
4 provided by Section 271.9051, Local Government Code. This
5 subsection does not apply to the purchase of telecommunications
6 services or information services, as those terms are defined by 47
7 U.S.C. Section 153.

8 Sec. 130.305. RULES AND PROCEDURES; AUDITS BY STATE
9 AUDITOR. (a) The board of trustees may adopt rules and procedures
10 for the acquisition of construction services by the district.

11 (b) The state auditor may audit district construction
12 contracts.

13 Sec. 130.306. NOTICE. (a) Except as otherwise provided by
14 this subchapter, for any method of contracting selected under
15 Section 130.303(a), the district shall, within a seven-day period,
16 publish the notice required by this section in at least two issues
17 of any newspaper of general circulation in the county in which the
18 district's central administrative office is located. The deadline
19 for receiving bids, proposals, or responses to a request for
20 qualifications may not be less than 10 business days after the date
21 of the publication of the first newspaper notice. If there is not a
22 newspaper of general circulation in the county in which the
23 district's central administrative office is located, the notice
24 shall be published in a newspaper of general circulation in a
25 location nearest the district's central administrative office. In
26 a two-step procurement process, the time and place where the
27 second-step bids, proposals, or responses will be received are not

1 required to be included in the notice.

2 (b) The district may, as an alternative to publishing
3 individual notices in a newspaper, publish on a publicly accessible
4 Internet site the notices required by this section, provided the
5 district publishes in a newspaper of general circulation at least
6 one time per week the Internet address where district notices may be
7 found. Notice posted on the Internet under this subsection must be
8 posted every day for at least 10 business days before the deadline
9 for receiving bids, proposals, or responses to a request for
10 qualifications.

11 (c) The notice required by this section must include:

12 (1) the location where the request for bid, proposal,
13 or qualification documents may be obtained or examined;

14 (2) the date, time, and place for receiving and
15 opening bids, proposals, or statements of qualifications;

16 (3) a general description of the work to be performed;

17 (4) the location and time of any mandatory site
18 inspections or pre-bid meetings; and

19 (5) the amount of any required bid bond, payment bond,
20 or performance bond.

21 Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS. (a)
22 After receipt of proposals, under rules adopted by the district,
23 the district may discuss acceptable or potentially acceptable
24 proposals with bidders to assess a bidder's ability to meet the
25 solicitation requirements.

26 (b) After receiving a proposal but before making an award,
27 the district may permit the three highest-ranking bidders to revise

1 their proposals, within the scope of the published specifications,
2 to obtain the best final offer.

3 (c) Before an award, the district may not disclose
4 information derived from proposals submitted from competing
5 bidders in conducting discussions under this section.

6 Sec. 130.308. PRE-BID CONFERENCE. (a) The district may
7 require a principal, officer, or employee of each prospective
8 bidder to attend a mandatory pre-bid conference conducted for the
9 purpose of discussing contract requirements and answering
10 questions from prospective bidders. Notice under this subsection
11 must be included in the notice published under Section 130.306.

12 (b) After the district conducts a mandatory pre-bid
13 conference, the district may send any additional required notice
14 for the proposed contract only to prospective bidders who attended
15 the conference.

16 Sec. 130.309. IDENTICAL BIDS. If, after considering the
17 factors described by Section 130.304, the district determines that
18 the district has received identical bids, the district shall cast
19 lots to determine which bidder will be awarded the contract. The
20 district shall invite the bidders to witness the selection process
21 under this section. The selection process must be conducted by at
22 least two district employees or members of the district's board of
23 trustees.

24 Sec. 130.310. BID DEPOSIT. (a) The district may, as the
25 district determines necessary, require a bid deposit in an amount
26 determined by the district. The amount of the deposit, if any, must
27 be stated in the notice required by Section 130.306 of the

1 invitation to bid.

2 (b) Within 10 days from the date of the award of a contract
3 or the rejection of all bids, the district shall refund the bid
4 deposit of an unsuccessful bidder. The bid bonds may not be held
5 for more than 90 days. Before the award of a contract, the district
6 may return bid bonds of bidders that are not being considered for
7 award of a contract.

8 (c) For public work contracts, the bid deposit required by
9 the district, if any, may only be in the form of a bid bond written
10 by a surety authorized to conduct business in this state.

11 Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. For a
12 contract for construction, the contractor must execute a good and
13 sufficient payment bond and a performance bond in accordance with
14 Chapter 2253, Government Code.

15 Sec. 130.312. DELEGATION. (a) Except as provided by
16 Subsection (b), the board of trustees of a district may, as
17 appropriate, delegate its authority under this subchapter to a
18 designated person, representative, or committee. In procuring
19 construction services, the district shall provide notice of the
20 delegation and the limits of the delegation in the request for bids,
21 proposals, or qualifications or in an addendum to the request. If
22 the district fails to provide that notice, a ranking, selection, or
23 evaluation of bids, proposals, or qualifications for construction
24 services other than by the board of trustees in an open public
25 meeting is advisory only.

26 (b) The board may not delegate the authority to act
27 regarding an action specifically authorized or required by this

1 subchapter to be taken by the board of trustees of a district.

2 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
3 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
4 INJUNCTION. (a) In this section:

5 (1) "Component procurements" means procuring the
6 component parts of an item or service that in normal practice would
7 be made in one procurement.

8 (2) "Separate procurements" means procurements, made
9 separately, of goods or services that in normal practice would be
10 made in one procurement.

11 (3) "Sequential procurement" means procurements, made
12 over a period, of goods or services that in normal practice would be
13 made in one procurement.

14 (b) An officer, employee, or agent of a district commits an
15 offense if the person with criminal negligence makes or authorizes
16 separate, sequential, or component procurements for the purpose of
17 avoiding the requirements of Section 130.303 or 130.304. An
18 offense under this subsection is a Class B misdemeanor and is an
19 offense involving moral turpitude that results in a forfeiture of
20 an officer's public office.

21 (c) An officer, employee, or agent of a district commits an
22 offense if the person with criminal negligence violates Section
23 130.303, 130.304, or 130.315 other than by conduct described by
24 Subsection (b). An offense under this subsection is a Class B
25 misdemeanor and is an offense involving moral turpitude that
26 results in a forfeiture of an officer's public office.

27 (d) An officer or employee of a district commits an offense

1 if the officer or employee knowingly violates Section 130.303,
2 130.304, or 130.315 other than by conduct described by Subsection
3 (b) or (c). An offense under this subsection is a Class C
4 misdemeanor.

5 (e) The final conviction of a person other than a member of
6 the board of trustees of a district for an offense under Subsection
7 (b) or (c) results in the immediate removal from office or
8 employment of that person. A member of the board of trustees who is
9 convicted of an offense under this section is subject to removal as
10 provided by Chapter 66, Civil Practice and Remedies Code. For four
11 years after the date of the final conviction, the removed person is
12 ineligible to be a candidate for or to be appointed or elected to a
13 public office in this state, is ineligible to be employed by or act
14 as an agent for this state or a political subdivision of this state,
15 and is ineligible to receive any compensation through a contract
16 with this state or a political subdivision of this state. This
17 subsection does not prohibit the payment of retirement benefits to
18 the removed person or the payment of workers' compensation benefits
19 to the removed person for an injury that occurred before the
20 commission of the offense for which the person was removed. This
21 subsection does not make a person ineligible for an office for which
22 the federal or state constitution prescribes exclusive eligibility
23 requirements.

24 (f) A court may enjoin performance of a contract made in
25 violation of this subchapter. A county attorney, district
26 attorney, criminal district attorney, citizen of the county in
27 which the district is located, or an interested party may bring an

1 action for an injunction. A party who prevails in an action brought
2 under this subsection is entitled to reasonable attorney's fees as
3 approved by the court.

4 Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF
5 CONTRACTOR. (a) A person or business entity that enters into a
6 contract with a district must give advance notice to the district if
7 the person or an owner or operator of the business entity has been
8 convicted of a felony. The notice must include a general
9 description of the conduct resulting in the conviction of a felony.

10 (b) A district may refuse to enter into a contract or other
11 transaction with a person who has been convicted of a felony or with
12 a business entity if an owner or operator of the entity has been
13 convicted of a felony.

14 (c) A district may terminate a contract with a person or
15 business entity if the district determines that the person or
16 business entity failed to give notice as required by Subsection (a)
17 or misrepresented the conduct resulting in the conviction. The
18 district must compensate the person or business entity for goods
19 delivered or services performed before the termination of the
20 contract.

21 (d) This section does not apply to a publicly held
22 corporation.

23 Sec. 130.315. CHANGE ORDERS. (a) After performance of a
24 construction contract begins, a district may approve change orders
25 if necessary to:

26 (1) make changes in plans or specifications; or

27 (2) decrease or increase the quantity of work to be

1 performed or materials, equipment, or supplies to be furnished.

2 (b) The total price of a contract may not be increased by a
3 change order unless provision has been made for the payment of the
4 added cost by the appropriation of current funds or bond funds for
5 that purpose, by the authorization of the issuance of certificates,
6 or by a combination of those procedures. The original contract
7 price may not be increased by more than 25 percent unless the board
8 of trustees determines the change is due to causes beyond the
9 reasonable control of the district or contractor.

10 (c) Except as provided by Subsection (b) or Section
11 130.304(j), a person, including a member of the board of trustees,
12 who knowingly authorizes one or more change orders that, in the
13 aggregate, exceed 25 percent of the original contract price, is
14 subject to Section 130.313.

15 Sec. 130.316. ERRORS AND OMISSIONS INSURANCE. For any
16 public work contract awarded under this subchapter, to protect the
17 interest of the district, the architect or engineer that prepared
18 the plans and specifications for the public work shall, at the
19 architect's or engineer's expense, carry an errors and omissions
20 insurance policy in an amount not less than \$1 million or the value
21 of the work if the work has a value of less than \$1 million.

22 Sec. 130.317. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a)
23 In this section:

24 (1) "Design-build contract" means a single contract
25 with a design-build firm for the design and construction of a
26 facility.

27 (2) "Design-build firm" means a partnership,

1 corporation, or other legal entity or team that includes an
2 engineer or architect and a builder qualified to engage in building
3 construction in this state.

4 (3) "Design criteria package" means a set of documents
5 that provides sufficient information, including criteria for
6 selection, to permit a design-build firm to prepare a response to a
7 district's request for qualifications and to the district's request
8 for any additional information. The design criteria package must
9 specify criteria the district considers necessary to describe the
10 project and may include, as appropriate, the legal description of
11 the site, survey information concerning the site, interior space
12 requirements, special material requirements, material quality
13 standards, conceptual criteria for the project, special equipment
14 requirements, cost or budget estimates, time schedules, quality
15 assurance and quality control requirements, site development
16 requirements, applicable codes and ordinances, provisions for
17 utilities, parking requirements, or any other requirement, as
18 applicable.

19 (b) A district may use the design-build method for the
20 construction, rehabilitation, alteration, or repair of a facility.
21 In using that method and in entering into a contract for the
22 services of a design-build firm, the contracting district and the
23 design-build firm shall follow the procedures provided by
24 Subsections (c)-(j).

25 (c) The district may designate an engineer or architect to
26 act as its representative. If the district's engineer or architect
27 is not a full-time employee of the district, any engineer or

1 architect designated shall be selected on the basis of demonstrated
2 competence and qualifications in accordance with Subchapter A,
3 Chapter 2254, Government Code.

4 (d) The district shall prepare a request for qualifications
5 that includes general information on the project site, project
6 scope, budget, special systems, selection criteria, and other
7 information that may assist potential design-build firms in
8 submitting proposals for the project. The district shall also
9 prepare a design criteria package that includes more detailed
10 information on the project. If the preparation of the design
11 criteria package requires engineering or architectural services
12 that constitute the practice of engineering within the meaning of
13 Chapter 1001, Occupations Code, or the practice of architecture
14 within the meaning of Chapter 1051, Occupations Code, those
15 services shall be provided in accordance with the applicable law.

16 (e) The district shall evaluate statements of
17 qualifications and select a design-build firm in two phases:

18 (1) In phase one, the district shall prepare a request
19 for qualifications and evaluate each offeror's experience,
20 technical competence, and capability to perform, the past
21 performance of the offeror's team and members of the team, and other
22 appropriate factors submitted by the team or firm in response to the
23 request for qualifications, except that cost-related or
24 price-related evaluation factors are not permitted. Each offeror
25 must certify to the district that each engineer or architect who is
26 a member of its team was selected based on demonstrated competence
27 and qualifications. The district shall qualify a maximum of five

1 offerors to submit additional information and, if the district
2 chooses, to interview for final selection.

3 (2) In phase two, the district shall evaluate the
4 information submitted by the offerors on the basis of the selection
5 criteria stated in the request for qualifications and the results
6 of any interview. The district may request additional information
7 regarding demonstrated competence and qualifications,
8 considerations of the safety and long-term durability of the
9 project, the feasibility of implementing the project as proposed,
10 the ability of the offeror to meet schedules, costing methodology,
11 or other factors as appropriate. The district may not require
12 offerors to submit detailed engineering or architectural designs as
13 part of the proposal. The district shall rank each proposal
14 submitted on the basis of the criteria set forth in the request for
15 qualifications. The district shall select the design-build firm
16 that submits the proposal offering the best value for the district
17 on the basis of the published selection criteria and on its ranking
18 evaluations. The district shall first attempt to negotiate a
19 contract with the selected offeror. If the district is unable to
20 negotiate a satisfactory contract with the selected offeror, the
21 district shall, formally and in writing, end negotiations with that
22 offeror and proceed to negotiate with the next offeror in the order
23 of the selection ranking until a contract is reached or
24 negotiations with all ranked offerors end.

25 (f) Following selection of a design-build firm under
26 Subsection (e), that firm's engineers or architects shall complete
27 the design, submitting all design elements for review and

1 determination of scope compliance to the district or to the
2 district's engineer or architect before or concurrently with
3 construction.

4 (g) An engineer shall have responsibility for compliance
5 with the engineering design requirements and all other applicable
6 requirements of Chapter 1001, Occupations Code. An architect shall
7 have responsibility for compliance with the requirements of Chapter
8 1051, Occupations Code.

9 (h) The district shall provide or contract for,
10 independently of the design-build firm, the inspection services,
11 testing of construction materials engineering, and verification
12 testing services necessary for acceptance of the facility by the
13 district. The district shall select those services for which it
14 contracts in accordance with Section 2254.004, Government Code.

15 (i) The design-build firm shall supply a signed and sealed
16 set of construction documents for the project to the district at the
17 conclusion of construction.

18 (j) A payment or performance bond is not required for, and
19 may not provide coverage for, the portion of a design-build
20 contract under this section that includes design services only. If
21 a fixed contract amount or guaranteed maximum price has not been
22 determined at the time a design-build contract is awarded, the
23 penal sums of the performance and payment bonds delivered to the
24 district must each be in an amount equal to the project budget, as
25 specified in the design criteria package. The design-build firm
26 shall deliver the bonds not later than the 10th day after the date
27 the design-build firm executes the contract unless the design-build

1 firm furnishes a bid bond or other financial security acceptable to
2 the district to ensure that the design-build firm will furnish the
3 required performance and payment bonds when a guaranteed maximum
4 price is established.

5 Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION
6 MANAGER-AGENT. (a) A district may contract with a construction
7 manager-agent in conjunction with a contract for the construction,
8 rehabilitation, alteration, or repair of a facility. In entering
9 into a contract for the services of a construction manager-agent, a
10 district shall follow the procedures prescribed by this section.

11 (b) A construction manager-agent is a sole proprietorship,
12 partnership, corporation, or other legal entity that provides
13 consultation to the district regarding construction,
14 rehabilitation, alteration, or repair of a facility. A district
15 using the services of a construction manager-agent may, under the
16 contract between the district and the construction manager-agent,
17 require the construction manager-agent to provide administrative
18 personnel, equipment necessary to perform duties under this
19 section, and on-site management and other services specified in the
20 contract. A construction manager-agent represents the district in
21 a fiduciary capacity.

22 (c) Before or concurrently with selecting a construction
23 manager-agent, the district shall select or designate an engineer
24 or architect who shall prepare the construction documents for the
25 project and who has full responsibility for complying with Chapter
26 1001 or 1051, Occupations Code, as applicable. If the engineer or
27 architect is not a full-time employee of the district, the district

1 shall select the engineer or architect on the basis of demonstrated
2 competence and qualifications as provided by Section 2254.004,
3 Government Code. The district's engineer or architect may not
4 serve, alone or in combination with another person, as the
5 construction manager-agent unless the engineer or architect is
6 hired to serve as the construction manager-agent under a separate
7 or concurrent procurement conducted in accordance with this
8 subchapter. This subsection does not prohibit the district's
9 engineer or architect from providing customary construction phase
10 services under the engineer's or architect's original professional
11 service agreement with the district and in accordance with
12 applicable licensing laws.

13 (d) A district shall select a construction manager-agent on
14 the basis of demonstrated competence and qualifications in the same
15 manner as provided for the selection of engineers or architects
16 under Section 2254.004, Government Code.

17 (e) A district using the services of a construction
18 manager-agent shall procure, in accordance with applicable law and
19 in any manner authorized by this chapter, a general contractor,
20 trade contractors, or subcontractors who will serve as the prime
21 contractor for their specific portion of the work.

22 (f) The district or the construction manager-agent shall
23 procure in accordance with Section 2254.004, Government Code, all
24 of the testing of construction materials engineering, the
25 inspection services, and the verification testing services
26 necessary for acceptance of the facility by the district.

27 Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION

1 MANAGER-AT-RISK. (a) A district may use the construction
2 manager-at-risk method for the construction, rehabilitation,
3 alteration, or repair of a facility. In using that method and in
4 entering into a contract for the services of a construction
5 manager-at-risk, a district shall follow the procedures prescribed
6 by this section.

7 (b) A construction manager-at-risk is a sole
8 proprietorship, partnership, corporation, or other legal entity
9 that assumes the risk for construction, rehabilitation,
10 alteration, or repair of a facility at the contracted price as a
11 general contractor and provides consultation to the district
12 regarding construction during and after the design of the facility.

13 (c) Before or concurrently with selecting a construction
14 manager-at-risk, the district shall select or designate an engineer
15 or architect who shall prepare the construction documents for the
16 project and who has full responsibility for complying with Chapter
17 1001 or 1051, Occupations Code, as applicable. If the engineer or
18 architect is not a full-time employee of the district, the district
19 shall select the engineer or architect on the basis of demonstrated
20 competence and qualifications as provided by Section 2254.004,
21 Government Code. The district's engineer, architect, or
22 construction manager-agent for a project may not serve, alone or in
23 combination with another, as the construction manager-at-risk.

24 (d) The district shall provide or contract for,
25 independently of the construction manager-at-risk, the inspection
26 services, testing of construction materials engineering, and
27 verification testing services necessary for acceptance of the

1 facility by the district. The district shall select those services
2 for which it contracts in accordance with Section 2254.004,
3 Government Code.

4 (e) The district shall select the construction
5 manager-at-risk in either a one-step or two-step process. The
6 district shall prepare a request for competitive sealed proposals,
7 in the case of a one-step process, or a request for qualifications,
8 in the case of a two-step process, that includes general
9 information on the project site, project scope, schedule, selection
10 criteria, estimated budget, the time and place for receipt of, as
11 applicable, proposals or qualifications, a statement as to whether
12 the selection process is a one-step or two-step process, and other
13 information that may assist the district in its selection of a
14 construction manager-at-risk. The district shall state the
15 selection criteria in the request for proposals or qualifications,
16 as applicable. The selection criteria may include the offeror's
17 experience, past performance, safety record, proposed personnel
18 and methodology, and other appropriate factors that demonstrate the
19 capability of the construction manager-at-risk. If a one-step
20 process is used, the district may request, as part of the offeror's
21 proposal, proposed fees and prices for fulfilling the general
22 conditions. If a two-step process is used, the district may not
23 request fees or prices in step one. In step two, the district may
24 request that five or fewer offerors, selected solely on the basis of
25 qualifications, provide additional information, including the
26 construction manager-at-risk's proposed fee and its price for
27 fulfilling the general conditions.

1 (f) At each step, the district shall receive, publicly open,
2 and read aloud the names of the offerors. Within 45 days after the
3 date of opening the proposals, the district shall evaluate and rank
4 each proposal submitted in relation to the criteria set forth in the
5 request for proposals. Within seven days from the date of the award
6 of the contract, the district shall make public all proposals,
7 including the fees and prices stated in each proposal.

8 (g) The district shall select the offeror that submits the
9 proposal that offers the best value for the district based on the
10 published selection criteria and on its ranking evaluation. The
11 district shall first attempt to negotiate a contract with the
12 selected offeror. If the district is unable to negotiate a
13 satisfactory contract with the selected offeror, the district
14 shall, formally and in writing, end negotiations with that offeror
15 and proceed to negotiate with the next offeror in the order of the
16 selection ranking until a contract is reached or negotiations with
17 all ranked offerors end.

18 (h) A construction manager-at-risk shall publicize notice,
19 in accordance with Section 130.306, and receive bids or proposals
20 from trade contractors or subcontractors for the performance of all
21 major elements of the work other than the minor work that may be
22 included in the general conditions. A construction manager-at-risk
23 may seek to perform portions of the work itself if the construction
24 manager-at-risk submits its bid or proposal for those portions of
25 the work in the same manner as all other trade contractors or
26 subcontractors and if the district determines that the construction
27 manager-at-risk's bid or proposal provides the best value for the

1 district.

2 (i) The construction manager-at-risk and the district or
3 its representative shall review all trade contractor or
4 subcontractor bids or proposals in a manner that does not disclose
5 the contents of the bid or proposal during the selection process to
6 a person not employed by the construction manager-at-risk,
7 engineer, architect, or district. All bids or proposals shall be
8 made public after the award of the contract or within seven days
9 after the date of final selection of bids or proposals, whichever is
10 later.

11 (j) If the construction manager-at-risk reviews, evaluates,
12 and recommends to the district a bid or proposal from a trade
13 contractor or subcontractor but the district requires another bid
14 or proposal to be accepted, the district shall compensate the
15 construction manager-at-risk by a change in price, time, or
16 guaranteed maximum cost for any additional cost and risk that the
17 construction manager-at-risk may incur because of the district's
18 requirement that another bid or proposal be accepted.

19 (k) If a selected trade contractor or subcontractor
20 defaults in the performance of its work or fails to execute a
21 subcontract after being selected in accordance with this section,
22 the construction manager-at-risk may, without advertising, fulfill
23 the contract requirements or select a replacement trade contractor
24 or subcontractor to fulfill the contract requirements.

25 (l) If a fixed contract amount or guaranteed maximum price
26 has not been determined at the time the contract is awarded, the
27 penal sums of the performance and payment bonds delivered to the

1 district must each be in an amount equal to the project budget, as
2 specified in the request for qualifications. The construction
3 manager-at-risk shall deliver the bonds not later than the 10th day
4 after the date the construction manager-at-risk executes the
5 contract unless the construction manager-at-risk furnishes a bid
6 bond acceptable to the district to ensure that the construction
7 manager will furnish the required performance and payment bonds
8 when a guaranteed maximum price is established.

9 Sec. 130.320. SELECTING CONTRACTOR FOR CONSTRUCTION
10 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a
11 contractor for construction, rehabilitation, alteration, or repair
12 services for a facility through competitive sealed proposals, a
13 district shall follow the procedures prescribed by this section.

14 (b) The district shall select or designate an engineer or
15 architect to prepare construction documents for the project. The
16 selected or designated engineer or architect has full
17 responsibility for complying with Chapter 1001 or 1051, Occupations
18 Code, as applicable. If the engineer or architect is not a
19 full-time employee of the district, the district shall select the
20 engineer or architect on the basis of demonstrated competence and
21 qualifications as provided by Section 2254.004, Government Code.

22 (c) The district shall provide or contract for,
23 independently of the contractor, the inspection services, testing
24 of construction materials engineering, and verification testing
25 services necessary for acceptance of the facility by the district.
26 The district shall select those services for which it contracts in
27 accordance with Section 2254.004, Government Code, and shall

1 identify them in the request for proposals.

2 (d) The district shall prepare a request for competitive
3 sealed proposals that includes construction documents, selection
4 criteria, estimated budget, project scope, schedule, and other
5 information that contractors may require to respond to the request.

6 (e) The district shall receive, publicly open, and read
7 aloud the names of the offerors. Within 45 days after the date of
8 opening the proposals, the district shall evaluate and rank each
9 proposal submitted in relation to the published selection criteria.

10 (f) The district shall first attempt to negotiate a contract
11 with the highest-ranked offeror. The district and its engineer or
12 architect may discuss with the selected offeror options for a scope
13 or time modification and any price change associated with the
14 modification. If the district is unable to negotiate a contract
15 with the selected offeror, the district shall, formally and in
16 writing, end negotiations with that offeror and proceed to the next
17 offeror in the order of the selection ranking until a contract is
18 reached or all proposals are rejected.

19 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
20 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
21 prohibited by other law and to the extent consistent with this
22 subchapter, a district may use competitive bidding to select a
23 contractor to perform construction, rehabilitation, alteration, or
24 repair services for a facility.

25 Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES
26 CONSTRUCTION OR REPAIR. (a) A district may award job order
27 contracts for the minor construction, repair, rehabilitation, or

1 alteration of a facility if the work is of a recurring nature but
2 the delivery times are indefinite and indefinite quantities and
3 orders are awarded substantially on the basis of prescribed and
4 prepriced tasks.

5 (b) The district may establish contractual unit prices for a
6 job order contract by:

7 (1) specifying one or more published construction unit
8 price books and the applicable divisions or line items; or

9 (2) providing a list of work items and requiring the
10 offerors to bid or propose one or more coefficients or multipliers
11 to be applied to the price book or work items as the price proposal.

12 (c) The district shall advertise for, receive, and publicly
13 open sealed proposals for job order contracts.

14 (d) The district may require offerors to submit additional
15 information besides rates, including experience, past performance,
16 and proposed personnel and methodology.

17 (e) The district may award job order contracts to one or
18 more job order contractors in connection with each solicitation of
19 bids or proposals.

20 (f) An order for a job or project under the job order
21 contract must be signed by the district's representative and the
22 contractor. The order may be a fixed price, lump-sum contract based
23 substantially on contractual unit pricing applied to estimated
24 quantities or may be a unit price order based on the quantities and
25 line items delivered.

26 (g) The contractor shall provide payment and performance
27 bonds, if required by law, based on the amount or estimated amount

1 of any order.

2 (h) The base term of a job order contract is for the period
3 and with any renewal option that the district sets forth in the
4 request for proposals. If the district fails to advertise that
5 term, the base term may not exceed two years and is not renewable
6 without further advertisement and solicitation of proposals.

7 (i) If a job order contract or an order issued under the
8 contract requires engineering or architectural services that
9 constitute the practice of engineering within the meaning of
10 Chapter 1001, Occupations Code, or the practice of architecture
11 within the meaning of Chapter 1051, Occupations Code, those
12 services shall be provided in accordance with applicable law.

13 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING. (a)
14 Except as provided by Subsection (d) and Section 130.304(j), a
15 contract for construction with a cost of \$10,000 or more but less
16 than \$50,000, including contingency or reserve amounts, must be
17 made through written competitive bids or proposals. A minimum of
18 three bids or proposals must be considered before awarding a
19 contract. A district is not required to advertise the contract.

20 (b) In determining to whom to award a contract under this
21 section, the district shall consider the factors described by
22 Section 130.304(b).

23 (c) A person may not use this section to knowingly violate
24 Section 130.313.

25 (d) A contract is not required to be made through
26 competitive bids or proposals under this section if the contract is
27 for the repair or replacement of a captive replacement part or

1 component for equipment or a specialized service that is available
2 from only one source.

3 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY BY DISTRICT

4 Sec. 130.351. SALE OF PERSONAL PROPERTY BY DISTRICT. A
5 district shall dispose of surplus personal property in an
6 accountable manner that best serves the interest of the district. A
7 sale of personal property that is not covered by Chapter 791,
8 Government Code, must be solicited and awarded in the same manner as
9 a contract for the purchase of goods or services under Subchapter K.

10 Sec. 130.352. METHODS OF DISPOSAL. (a) A district may use
11 any of the following methods to dispose of surplus personal
12 property:

13 (1) the use of a licensed auctioneer to conduct live or
14 Internet-based auctions;

15 (2) a direct sale by the district to a person
16 submitting the highest and best bid through a competitive process,
17 including an Internet-based bidding system;

18 (3) the trade-in of items when purchasing new items;

19 (4) a sale or transfer to another governmental entity
20 at a mutually agreed price; or

21 (5) a donation to a public school in this state.

22 (b) If the district is unable to find a buyer for surplus
23 property, the property may be:

24 (1) discarded in accordance with applicable federal,
25 state, and local laws, ordinances, and rules; or

26 (2) removed by an interested party at no charge or for
27 a nominal charge.

1 (c) Except as provided by this section, a district may not
2 give, donate, loan, or transfer surplus property to any person or
3 entity.

4 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

5 Sec. 130.401. PROFESSIONAL SERVICES. (a) For purposes of
6 this section, "professional services provider" means a person who
7 provides services of a predominantly mental or intellectual matter
8 and who is a member of a discipline requiring special knowledge or
9 the attainment of a high order of learning, skill, or intelligence.
10 The term includes a person who provides professional services, as
11 defined by Section 2254.002, Government Code.

12 (b) A district shall select and enter into contracts for
13 professional services in accordance with Subchapter A, Chapter
14 2254, Government Code. If the estimated value of a contract for
15 professional services is \$50,000 or more during a fiscal year, or
16 during the contract's term if the contract is a multiple year
17 contract, the district shall publish notice of the request for
18 qualifications as provided by Section 130.258.

19 (c) If the estimated value of a contract for professional
20 services is \$10,000 or more but less than \$50,000 during a fiscal
21 year or during the contract's term if the contract is a multiple
22 year contract, requests for qualifications must be solicited from
23 at least three professional service providers and the publication
24 of notice is not required.

25 (d) A professional service provider selected by the
26 district may be selected for a specific project or for various
27 projects that arise during the term of the provider's contract. The

1 term of a contract with a professional service provider may not
2 exceed five years, except that the professional service provider
3 shall complete services for projects started before the end of the
4 contract term.

5 Sec. 130.402. CONSULTANTS. (a) For purposes of this
6 section, "consultant" includes a financial advisor, fiscal agent,
7 auctioneer, personnel services provider, travel agent, technology
8 or educational services provider or advisor, and a business engaged
9 to teach approved courses.

10 (b) A district shall select and enter into contracts with
11 consultants in accordance with Section 130.253 or Subchapter B,
12 Chapter 2254, Government Code. If the estimated value of a contract
13 for consulting services is \$50,000 or more during a fiscal year, or
14 during the contract's term if the contract is a multiple year
15 contract, the district shall advertise the request for
16 qualifications, bids, or proposals as provided by Section 130.258.

17 (c) If the estimated value of a contract for consulting
18 services is \$10,000 or more but less than \$50,000 during a fiscal
19 year or during the contract's term if the contract is a multiple
20 year contract, requests for qualifications, bids, or proposals must
21 be solicited from at least three consulting service providers and
22 the publication of notice is not required.

23 (d) A consulting service provider selected by the district
24 may be selected for a specific project or for various projects that
25 arise during the term of the consultant's contract. The term of a
26 contract with a consulting service provider may not exceed five
27 years, except that the consulting service provider shall complete

1 services for projects started before the end of the contract term.

2 Sec. 130.403. RULES AND PROCEDURES; AUDITS BY STATE
3 AUDITOR. (a) The board of trustees may adopt rules and procedures
4 for the acquisition of professional services and consultants by the
5 district.

6 (b) The state auditor may audit a district's contracts for
7 professional services or consultants.

8 SECTION 5. Section 271.023, Local Government Code, is
9 amended to read as follows:

10 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
11 conflict, the provisions of Subchapter B, Chapter 44, Education
12 Code, relating to the purchase of goods and services under contract
13 by a school district and the provisions of Subchapters K and L,
14 Chapter 130, Education Code, relating to the purchase of goods and
15 services and construction services under contract by a junior
16 college prevail over this subchapter.

17 SECTION 6. Sections 44.0311(b), 130.010, and 130.0101,
18 Education Code, are repealed.

19 SECTION 7. The change in law made by this Act applies only
20 to a contract for which requests for bids, requests for proposals,
21 or requests for qualifications are published or distributed on or
22 after the effective date of this Act. A contract for which requests
23 for bids, requests for proposals, or requests for qualifications
24 are published or distributed before the effect date of this Act is
25 covered by the law in effect when the requests were published or
26 distributed, and the former law is continued in effect for that
27 purpose.

1 SECTION 8. This Act takes effect September 1, 2007.

HB No. 2373

By Deanie A. Mousa

A BILL TO BE ENTITLED
AN ACT

relating to the purchasing and contracting practices of junior college districts; providing criminal penalties.

MAR 02 2007

Filed with the Chief Clerk

MAR 08 2007

Read first time and referred to Committee on Higher Education

Reported _____ favorably (as amended)
(as substituted)

Sent to Committee on (Calendars)
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)